

Emmett E. Lyne
Direct Dial (617) 556-3885
EMail: ELyne@RichMaylaw.com

March 18, 2005

By Hand and E-Filing

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: DTE 04-121; Investigation by the Department of Telecommunications and Energy, pursuant to Executive Order 384, commencing a rulemaking pursuant to 220 C.M.R. §7.00 et seq., Residential and Commercial Energy Conservation Service Program Cost Recovery, 220 C.M.R. §11.00 et seq., Rules Governing Restructuring of the Electric Industry, 220 C.M.R. §13.00 et seq., Consumer Protection From the Unauthorized Changing of Local or Long Distance Telephone Service Providers, 220 C.M.R. §14.00 et seq., The Unbundling of Services Related to The Provision of Natural Gas, 220 C.M.R. §25.00 et seq., Billing and Termination Procedures of the Department of Telecommunications and Energy, and 220 C.M.R. §45.00 et seq., Pole Attachment, Duct, Conduit And Right-of-Way Complaint and Enforcement Procedures.

Dear Secretary Cottrell:

We are pleased to file these comments with respect to the amendments proposed by the Department of Telecommunications and Energy (the "Department") to 220 C.M.R. § 7.00 et seq., Residential and Commercial Energy Conservation Service ("RCS") Program Cost Recovery (the "RCS Regulations"), on behalf of the RCS Network, an unincorporated association that,

Mary L. Cottrell, Secretary
March 18, 2005
Page 2

periodically, addresses in a collaborative fashion matters relating to the RCS program. The RCS Network is comprised of: Bay State Gas Company; The Berkshire Gas Company; Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company d/b/a NSTAR Electric; Boston Gas Company, Colonial Gas Company and Essex Gas Company d/b/a KeySpan Energy Delivery New England; Cape Light Compact; Fitchburg Gas and Electric Light Company d/b/a Unitil; Massachusetts Electric Company; Nantucket Electric Company; New England Gas Company; NSTAR Gas Company; and Western Massachusetts Electric Company. The RCS Network appreciates this opportunity to offer comments on the amendments to the RCS Regulations.

The RCS Network has only limited comments and changes with respect to the Department's proposed amendments to the RCS Regulations. The proposed RCS Network changes are indicated on the attached redlined version of the RCS Regulations (see Attachment A). In particular, Attachment A shows the limited and discrete changes proposed to the Department's amendments. The RCS Network commends the Department for updating and amending the current RCS Regulations so that they better reflect current practices in the field and current statutory requirements. As an overall comment, the RCS Network is supportive of, and appreciative of, the Department's efforts.

We outline below the specific changes to the proposed RCS Regulations advocated by the RCS Network, along with a brief discussion of the basis for such proposed changes.

Mary L. Cottrell, Secretary
March 18, 2005
Page 3

§7.01 "Definitions" et al.

The RCS Network, at the specific request of its member Cape Light Compact, proposes deleting the references to "municipal load aggregators" in § 7.01, as well as in §§ 7.02, 7.03, 7.05, 7.09, 7.10, and 7.11. The reason for this proposed change is that, based on information provided by Cape Light Compact, the RCS Network members understand that municipal load aggregators' RCS activities historically have been addressed separately under Cape Light Compact Energy Efficiency Plan, D.T.E. 00-47-C (April 6, 2001), G.L. c. 164, §134(b) and G.L. c. 25A, §11G. In addition, Cape Light Compact does not utilize or maintain books of account or regulatory account numbers in the format mandated for utilities and advises the RCS Network members that it does not believe that it is so required. The RCS Regulations refer to such accounts in numerous sections and these references would not be appropriate for Cape Light Compact. In order to avoid confusion or possible inconsistency, at the request of Cape Light Compact, the RCS Network recommends that the references to "municipal load aggregators" be deleted in these sections. If the Department has specific questions in this regard, the RCS Network would refer them directly to Cape Light Compact and its counsel.

§7.02 "Accounting Treatment of Expense Items"

The RCS Network recommends deleting the reference to "commercial audits" in §7.02(7)(c) because, given the current residential focus of the program, such commercial audits are no longer performed. The RCS Network would also appreciate the Department's guidance on

Mary L. Cottrell, Secretary
March 18, 2005
Page 4

the specific costs to be included under §7.02(7)(d) "implementation services." The RCS Network members believe such services would generally entail the low-cost measures, *e.g.*, efficient light bulbs, installed in connection with the RCS program, but would appreciate the Department's clarification on this point. Also, while no change is recommended to the proposed RCS Regulations, the RCS Network notes the reference to DOER and Department assessments in §7.02(7). While RCS Network members currently pay a DOER assessment, there is no separate DTE assessment for the RCS program. The RCS Network believes that the reference to Department assessments would provide flexibility for future assessments and is not proposing a change in this regard.

§7.05 "Annual Budget"

With respect to §7.05(2) relating solely to the filing of rate adjustments, the RCS Network respectfully requests that the language in the first sentence of §7.05(2) be changed from "No later than November 1. . ." to "No later than November 15. . .". Members of the RCS Network plan to continue making their RCS annual budget filings on or before November 1. Allowing *rate* adjustments to be filed no later than November 15, would comport with the present practice for affiliate gas utilities preparing more than one filing to have additional time to ensure that detailed and accurate RCS adjustments filings are assembled, based on complete information.

Mary L. Cottrell, Secretary
March 18, 2005
Page 5

§7.06 "Cost Recovery"

The RCS Network recommends a change in the fourth sentence of §7.06 so that the sentence reads as follows: "The charge shall be calculated on the amount of those expenses, plus any under/over collection from the previous year, divided by the total number of firm ratepayers of such utility." This proposed change is meant to reflect how, mechanically, the RCS charge is actually calculated and corrects what the RCS Network believes to be a clerical error in the current §7.06, which indicates that the RCS charge is calculated based on expenses less any revenues expected be received during the upcoming year. In actuality, the charge is based on projected expenses with an adjustment, either positive or negative, based on **historical** under/over revenue collections (as opposed to future revenues). In short, the RCS Network proposed edit to §7.06 merely seeks to reflect more accurately the mechanics of the actual calculation of the RCS surcharge.

§7.07 "Rate Treatment"

The RCS Network proposes deleting the last sentence of §7.07 with respect to scheduling the distribution of ECS Program inserts. The scheduling of such distribution is adequately addressed earlier in §7.07, and the last sentence refers to coordination with the filing of a "Utility Implementation Plan." The RCS program has evolved so that utility implementation plans are not filed on an annual basis with the Division of Energy Resources ("DOER"). Instead, in implementing its State Plan for the RCS program, the DOER has moved to a coalition action

Mary L. Cottrell, Secretary
March 18, 2005
Page 6

plan model and references to the former utility implementation plans could prove confusing. Accordingly, the RCS Network recommends that the last sentence in §7.07 be deleted.

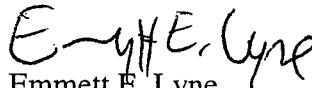
§7.09 "Quarterly Reports"

The RCS Network proposed changes to §7.09 are reflected in Attachment A. The changes recommended by the RCS Network are pragmatic and are meant solely to address the reporting regimen that the RCS Network understands will be utilized on a forward-going basis. In particular, the RCS Network understands that quarterly RCS reports will be filed with the DOER as opposed to with the Department and that there will be an annual "true up" filing made with the DOER on or before March 31. This true up filing would provide information with respect to actual performance versus projected performance for the previous year. The RCS Network members would be pleased to provide such reports to the Department as well, but understands that, currently, quarterly reports and the annual true up filing are preferred to be filed with the DOER.

Mary L. Cottrell, Secretary
March 18, 2005
Page 7

In conclusion, the RCS Network greatly appreciates this opportunity to offer these comments and supports the Department in its efforts to update the RCS Regulations. If you have any questions with respect to any of the foregoing, please do not hesitate to contact the undersigned, or any representative of the individual members of the RCS Network.

Very truly yours,


Emmett E. Lyne

cc: RCS Networks Members,
Jeffrey Bernstein, Esq.
Patricia Crowe, Esq.,
Gary Epler, Esq.
Erika Hafner, Esq.
Stephen Klionsky, Esq.
Thomas O'Neill, Esq.,
Kevin Penders, Esq.,
David Rosenzweig, Esq.,
Steven Venezia, Esq.

K:\Clients\BEC\Letter to Mary Cottrell 3-18-05.doc

ATTACHMENT A

RCS Network Comments

220 CMR 7.00: RESIDENTIAL ENERGY CONSERVATION SERVICE PROGRAM
COST RECOVERY

Section

7.01:-_Definitions

7.02: Accounting Treatment of Expense Items

7.03: Revenue Treatment

(7.04: Reserved)

7.05: Annual Budget

7.06: Cost Recovery

7.07: Rate Treatment

7.08: Rate Schedule

7.09: Quarterly Reports

7.10: Annual Reconciliation

7.11: Budget Amendment Procedure

7.01: Definitions

Under 220 CMR 7.00, the following words and phrases shall have the following meanings, unless the context requires otherwise:

Department The Department of Telecommunications and Energy.

~~Municipal Load Aggregator a municipality or group of municipalities establishing a load aggregation program under M.G.L. c. 164, § 134(a) and (b).~~

Person any individual, partnership, corporation, trust association, utility, agency, or any political subdivision of the Commonwealth.

Ratepayer any person who receives a bill from a utility for electricity or gas purchased from such utility.

State Plan the plan adopted by the Division of Energy Resources ("DOER") specifying the program requirements, how they will be implemented, and who will carry them out under the Massachusetts residential energy conservation service ("ECS").

€

Third Party any entity providing services as mandated by M.G.L. c. 164, App. § 2-1 - 2-10 and M.G.L. c. 25, § ~~hA1~~ 1A, and the State Plan of which a utility company is an incorporator, sponsor or contractor.

Utility any electric or gas company, as defined in M.G.L. c. 164, § 1.

Year for purposes of the cost recovery of expenses for the ECS programs for each

utility, the term year shall mean a period commencing January 1 and ending December 31.

7.02: Accounting Treatment of Expense Items

The expenses and costs attributable to providing any services under the State

Plan by any utility ~~or municipal load aggregator~~ directly providing such services shall be expensed (for purposes of recovery) within Account 916 - Miscellaneous Sales Expense. Each of the expenses shall be maintained within a separate account within Account 916, which shall include but is not limited to the following subaccounts:

- (1) Program Announcements and Promotion Costs.
- (2) Public Information Costs.
- (3) Administrative and General Expenses associated with energy audits, list distribution, customer billing services, arranging installation or financing of energy conservation measures, and conciliation conference expenses.
- (4) Performance of energy conserving practices during an audit.
- (5) Labor Costs Related to an energy audit.
- (6) Post-installation expenses.
- (7) Division of Energy Resources and Department of Telecommunications and Energy cost assessments.

Further, each of the aforementioned subaccounts shall be segregated into the following categories:

- (a) one-to-four-unit residential audits;
- (b) multifamily residential audits; and
- (c) ~~commercial audits; and~~
- (d) ~~implementation services.~~

Any third party providing such services shall maintain separate subaccounts in the same manner and form as prescribed in 220 CMR 7.02(a).

A utility ~~or municipal load aggregator~~ whose obligation is being discharged by a third party shall expense to

Account 916 the total gross of such expenses billed to the utility by the third party for ECS expenses. Any expense directly incurred by a utility ~~or municipal load aggregator~~ shall be maintained in a

separate subaccount within Account 916.

7.03: Revenue Treatment

Any revenue attributable to the payments by a customer of a utility ~~or municipal load aggregator~~ for any services provided under the ECS program shall be accounted for in a subaccount within Account 456 (Other Electric Revenue) or Account 495 (Other Gas

Revenues). Included within such subaccounts shall be all revenue attributed to an adjustment in rates as set forth in 220 CMR 7.06. A utility or municipal load aggregator shall maintain appropriate and separate subaccounts as approved by the Department within those accrual and deferral accounts which are necessary for the associated balance sheet transactions.

7.05: Annual Budget

(1) Each utility or third party or municipal load aggregator shall file with the Department no later than November first of each calendar year its proposed ECS operating budget for the year beginning on January first of the subsequent year. Said operating budget shall enumerate the income and expenses that will be necessary to carry out the State Plan during the forthcoming period.

(2) No later than November ~~15~~ of each calendar year, a gas utility shall file an application for an adjustment in its rates to recover the expenses contained in its operating budget or the expenses related to the operating budget of any third party providing ECS services for the period commencing January 1 of the subsequent year, together with any information necessary to calculate such rate adjustment. Such information shall be submitted in the form provided by the Department.

(3) Approval of each utility's or third party's or municipal load aggregator's budget and the application for an adjustment in a utility's rates shall be decided after notice and public hearing.

(4) For purposes of compliance with M.G.L. c. 164, App. § 2-1 - 2-10, a utility's or municipal load aggregator's filing of its proposed budget or application for an adjustment in its rates earlier than the dates set forth in 220 CMR 7.05(a) and 7.05(b) shall not cause the statutory time period for hearings to be commenced.

7.06: Cost Recovery

Each gas utility shall be allowed to collect from its from ratepayers an equal monthly charge based upon its approved operating budget. The charge shall be calculated at least yearly, unless otherwise ordered by the Department, and be put into effect on January 1 for the following 12-month period. The charge shall be based on the allowed expenses contained within the approved operating budget for that period. The charge shall be calculated on the amount of those expenses, ~~less~~ plus any revenues expected to be received under/over collection from the ECS program during that period ~~previous year~~, divided by the total number of firm ratepayers of such utility. This amount shall be charged to each ratepayer in equal monthly installments (or equal bi-monthly installments in the case of a utility which bills bi-monthly).

7.07: Rate Treatment

The monthly or bi-monthly surcharge calculated in accordance with 220 CMR 7.06 shall be incorporated into the first block or step of each gas company's rates or, where appropriate, such surcharge shall be incorporated into the monthly (or ~~bi~~-monthly) customer charge.

An explanation of the ECS program shall be printed on a separate bill insert as approved by the Department and provided at least once each year to every customer of record, and to every customer of record when the customer is initially billed for

~~service. The schedule for distribution of the ECS program inserts shall be filed in the Utility Implementation Plan at the time that the utility files its annual Utility Implementation Plan with the Division of Energy Resources.~~

7.08: Rate Schedule

Such monthly charge shall be contained within a separate rate schedule to be filed by each gas utility with the Rates Division of the Department.

7.09: ~~Quarterly~~Quarterly Reports

Each gas utility or third party shall file quarterly a report with the Department's ~~Secretary~~DOER on or before the 30th of the months of April, July, October and January for the previous quarter of operation of the ECS programs. The reports shall contain a description of the activities performed pursuant to the State Plan and 225 CMR § 4.00 ~~q~~. ~~A gas utility annual report shall also be filed with the Department at the same time as the quarterly report due in January et seq. Gas utilities shall file an annual report with the DOER on or before March 31 that provides a true-up for the previous year's operation and shall contain the same information, on an annual basis, as required in the quarterly reports. The gas utility annual report shall also contain a breakdown of the expenses actually incurred by a utility or third party in the same format and detail that the proposed operating budget is submitted. Each electric company and municipal load aggregator shall file an annual report with the Department no later than September 1 addressing ECS costs and accomplishments from the previous calendar year.~~

7.10: Annual Reconciliation

Each gas utility shall take into account deficiencies or surpluses of revenues for such ECS expenses produced from the previous surcharge when submitting its proposed operating budget. This shall be considered the reconciliation period required for each gas utility. Such reconciliation shall be included in the surcharge billed in the next succeeding year.

Each electric company and ~~municipal load aggregator~~ shall take into account deficiencies or surpluses of revenues for such ECS expenses produced from the previous calendar year when submitting its proposed operating budget. This shall be considered the reconciliation period for each electric utility ~~and municipal load aggregator~~. Such reconciliation shall be reflected in the proposed operating budget for the next succeeding calendar year.

7.11: Budget Amendment Procedures

~~A utility or municipal load aggregator~~ may at any time, on its own motion or as may be required by the Department, petition the Department to amend its operating budget or surcharge. The Department may order such a change after notice and public hearing of such petition.

REGULATORY AUTHORITY

220 CMR 7.00: M.G.L. c. 164 App. § 2-1 - 2-10.

K:\Clients\BEC\RCS Rule changes 2005 (3).doc

RCS Network Comments

220 CMR 7.00: RESIDENTIAL ENERGY CONSERVATION SERVICE PROGRAM
COST RECOVERY

Section

7.01: Definitions

7.02: Accounting Treatment of Expense Items

7.03: Revenue Treatment

(7.04: Reserved)

7.05: Annual Budget

7.06: Cost Recovery

7.07: Rate Treatment

7.08: Rate Schedule

7.09: Quarterly Reports

7.10: Annual Reconciliation

7.11: Budget Amendment Procedure

7.01: Definitions

Under 220 CMR 7.00, the following words and phrases shall have the following meanings, unless the context requires otherwise:

Department The Department of Telecommunications and Energy.

Person any individual, partnership, corporation, trust association, utility, agency, or any political subdivision of the Commonwealth.

Ratepayer any person who receives a bill from a utility for electricity or gas purchased from such utility.

State Plan the plan adopted by the Division of Energy Resources ("DOER") specifying the program requirements, how they will be implemented, and who will carry them out under the Massachusetts residential energy conservation service ("ECS").

Third Party any entity providing services as mandated by M.G.L. c. 164, App. § 2-1 - 2-10 and M.G.L. c. 25, § 1 1A, and the State Plan of which a utility company is an incorporator, sponsor or contractor.

Utility any electric or gas company, as defined in M.G.L. c. 164, § 1.

Year for purposes of the cost recovery of expenses for the ECS programs for each utility, the term year shall mean a period commencing January 1 and ending December 31.

7.02: Accounting Treatment of Expense Items

The expenses and costs attributable to providing any services under the State Plan by any utility directly providing such services shall be expensed (for purposes of recovery) within Account 916 - Miscellaneous Sales Expense. Each of the expenses shall be

maintained within a separate account within Account 916, which shall include but is not limited to the following subaccounts:

- (1) Program Announcements and Promotion Costs.
- (2) Public Information Costs.
- (3) Administrative and General Expenses associated with energy audits, list distribution, customer billing services, arranging installation or financing of energy conservation measures, and conciliation conference expenses.
- (4) Performance of energy conserving practices during an audit.
- (5) Labor Costs Related to an energy audit.
- (6) Post-installation expenses.
- (7) Division of Energy Resources and Department of Telecommunications and Energy cost assessments.

Further, each of the aforementioned subaccounts shall be segregated into the following categories:

- (a) one-to-four-unit residential audits;
- (b) multifamily residential audits; and
- (c) implementation services

Any third party providing such services shall maintain separate subaccounts in the same manner and form as prescribed in 220 CMR 7.02(a).

A utility whose obligation is being discharged by a third party shall expense to Account 916 the total gross of such expenses billed to the utility by the third party for ECS expenses. Any expense directly incurred by a utility shall be maintained in a separate subaccount within Account 916.

7.03: Revenue Treatment

Any revenue attributable to the payments by a customer of a utility for any services provided under the ECS program shall be accounted for in a subaccount within Account 456 (Other Electric Revenue) or Account 495 (Other Gas Revenues). Included within such subaccounts shall be all revenue attributed to an adjustment in rates as set forth in 220 CMR 7.06. A utility shall maintain appropriate and separate subaccounts as approved by the Department within those accrual and deferral accounts which are necessary for the associated balance sheet transactions.

7.05: Annual Budget

- (1) Each utility or third party shall file with the Department no later than November first of each calendar year its proposed ECS operating budget for the year beginning on January first of the subsequent year. Said operating budget shall enumerate the income and expenses that will be necessary to carry out the State Plan during the forthcoming period.

(2) No later than November 15 of each calendar year, a gas utility shall file an application for an adjustment in its rates to recover the expenses contained in its operating budget or the expenses related to the operating budget of any third party providing ECS services for the period commencing January 1 of the subsequent year, together with any information necessary to calculate such rate adjustment. Such information shall be submitted in the form provided by the Department.

(3) Approval of each utility's or third party's budget and the application for an adjustment in a utility's rates shall be decided after notice and public hearing.

(4) For purposes of compliance with M.G.L. c. 164, App. § 2-1 - 2-10, a utility's filing of its proposed budget or application for an adjustment in its rates earlier than the dates set forth in 220 CMR 7.05(a) and 7.05(b) shall not cause the statutory time period for hearings to be commenced.

7.06: Cost Recovery

Each gas utility shall be allowed to collect from its ratepayers an equal monthly charge based upon its approved operating budget. The charge shall be calculated at least yearly, unless otherwise ordered by the Department, and be put into effect on January 1 for the following 12-month period. The charge shall be based on the allowed expenses contained within the approved operating budget for that period. The charge shall be calculated on the amount of those expenses, plus any under/over collection from the previous year, divided by the total number of firm ratepayers of such utility. This amount shall be charged to each ratepayer in equal monthly installments (or equal bi-monthly installments in the case of a utility which bills bi-monthly).

7.07: Rate Treatment

The monthly or bi-monthly surcharge calculated in accordance with 220 CMR 7.06 shall be incorporated into the first block or step of each gas company's rates or, where appropriate, such surcharge shall be incorporated into the monthly (or bi-monthly) customer charge.

An explanation of the ECS program shall be printed on a separate bill insert as approved by the Department and provided at least once each year to every customer of record, and to every customer of record when the customer is initially billed for service.

7.08: Rate Schedule

Such monthly charge shall be contained within a separate rate schedule to be filed by each gas utility with the Rates Division of the Department.

7.09: Quarterly Reports

Each gas utility or third party shall file quarterly a report with the DOER on or before the 30th of the months of April, July, October and January for the previous quarter of operation of the ECS programs. The reports shall contain a description of the activities performed pursuant to the State Plan and 225 CMR § 4.00 et seq. Gas utilities shall file an annual report with the DOER on or before March 31 that provides a true-up for the previous year's operation in the same format and detail that the proposed operating budget is submitted. Each electric company shall file an annual report with the

Department no later than September 1 addressing ECS costs and accomplishments from the previous calendar year.

7.10: Annual Reconciliation

Each gas utility shall take into account deficiencies or surpluses of revenues for such ECS expenses produced from the previous surcharge when submitting its proposed operating budget. This shall be considered the reconciliation period required for each gas utility. Such reconciliation shall be included in the surcharge billed in the next succeeding year.

Each electric company shall take into account deficiencies or surpluses of revenues for such ECS expenses produced from the previous calendar year when submitting its proposed operating budget. This shall be considered the reconciliation period for each electric utility. Such reconciliation shall be reflected in the proposed operating budget for the next succeeding calendar year.

7.11: Budget Amendment Procedures

A utility may at any time, on its own motion or as may be required by the Department, petition the Department to amend its operating budget or surcharge. The Department may order such a change after notice and public hearing of such petition.

REGULATORY AUTHORITY

220 CMR 7.00: M.G.L. c. 164 App. § 2-1 - 2-10.

K:\Clients\BEC\RCS Rule changes 2005 (3).doc